

Superior Court of California County of Tulare

Family Court Services



Superior Court of California
County of Tulare
Family Dispute Resolution
Services

*Child Custody Mediation and
Recommending Counseling*

Welcome to the Orientation for “Families in Transition”



This Presentation

Parents are referred by the court to Family Court Services to work with a child custody recommending counselor. You can also refer yourselves for a voluntary mediation session. We have designed this presentation to help you get the most from your mediation and/or counseling session.

- *Section I:* General Information about Mediation and child custody recommending counseling.
- *Section II:* Mediation/CCRC when there are allegations of Domestic Violence
- We will cover the following topics:

Topics:

- *Important Terms to Know*
- *An Introduction to the Legal Process*
- *Tips for Making the Most of Mediation and Child Custody Recommending Counseling*
- *Children and Divorce*
- *Answers to Frequently Asked Questions*

If you have questions:

If you have questions about the information in this presentation, *write your questions & bring them to your mediation or child custody recommending counseling appointment.* Your counselor will be happy to answer your questions.



A Special Note About Agreements:

- *Some parents work out agreements on their own, or with the help of a professional.*
- *If parents already have a written, signed and dated agreement on custody and visitation, they are not required to come to Child custody recommending counseling.*
- *The legal term for your agreement is a “stipulation”.*



Part I:

Important Terms to Know

There are some terms which are helpful to know as you go through this legal process.

These include:

- *Custody: Legal & Physical*
- *Petitioner & Respondent*
- *Mediation & Child Custody Recommending Counseling*
- *The Best Interest of the Child*
- *The Parenting Plan*
- *Child Custody Evaluation*

“Custody”

There are two kinds of custody:

Legal Custody
&
Physical Custody

It's important to know the difference between them.



“Legal Custody”

Legal Custody gives parents the right to make decisions about a child’s education, religious upbringing, and non-emergency medical care.

Joint Legal Custody permits both parents to be involved in these decisions, *Sole legal custody* gives one parent authority to make these decisions.

“Physical Custody”

Physical Custody: the actual time that the child spends with each parent.

Joint Physical Custody: each parent has significant time with the child. *It does not require that time is shared equally.*

Sole Physical Custody: means that a child resides with one parent, with visitation ordered for the other parent.

“Petitioner” & “Respondent”

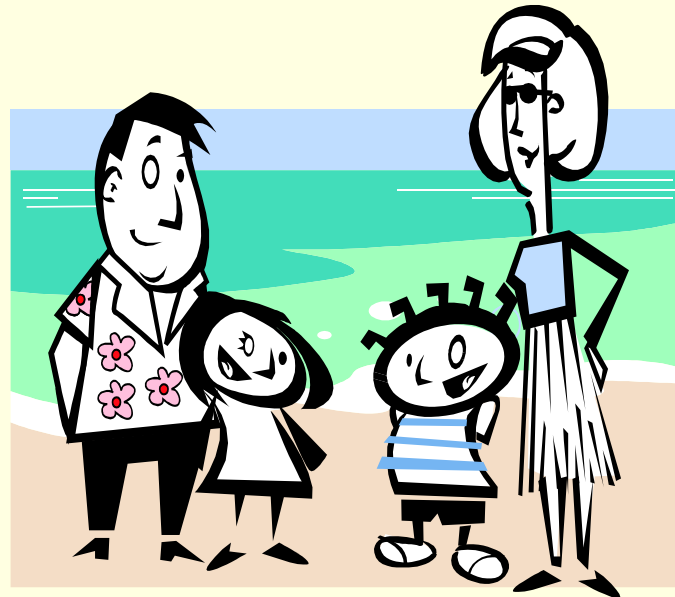
The *Petitioner* is the person who filed the papers that started the court action.

The *Respondent* is the other party who was served with the Petitioner’s papers and then filed a response.

In subsequent motions, these designations stay the same, so if initially, for example, mother is the respondent and she in the future files to change an order, she remains the respondent.

“Co-Parenting”

- Parents share responsibility for raising a child, even though they no longer live together.



“Mediation and Child Custody Recommending Counseling”

In both mediation and child custody recommending counseling, parties in dispute meet with a neutral third person – *the mediator* or *child custody recommending counselor*– whose role is to assist the parties in reaching an agreement. The mediator/counselor does not represent either party, but remains impartial.



“Mediator and Child Custody Recommending Counselor”

- Both are trained professionals assigned to help parents discuss their child’s needs and assist them in making a schedule that best serves the child. Both have a minimum of a master’s degree and two years of experience with families. The counselor and mediator attends yearly education requirements and is qualified to work with your family. The difference is that the recommending counselor provides a report to the court after your session which has recommendations about what might happen next and the mediator does not. In this county recommendations are given at all court hearings. They are not given if you come to a voluntary session.

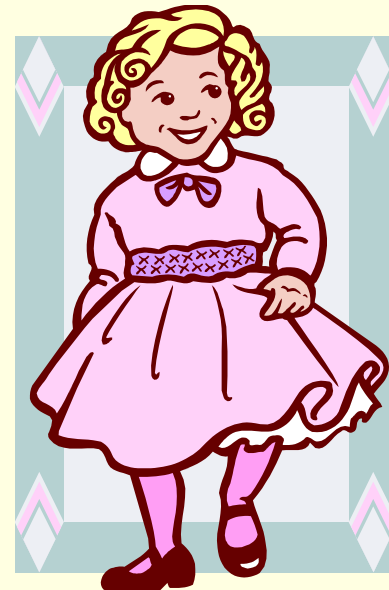


“Child Custody Mediation and Child Custody Recommending Counseling”

When parents do not agree on custody and visitation arrangements, California law requires that they attend mediation or child custody recommending counseling *before the court hearing* to try to reach an agreement. In child custody mediation/recommending counseling we will assist you in reaching an agreement on custody of and visitation with your child.

“Best Interests of the Child”

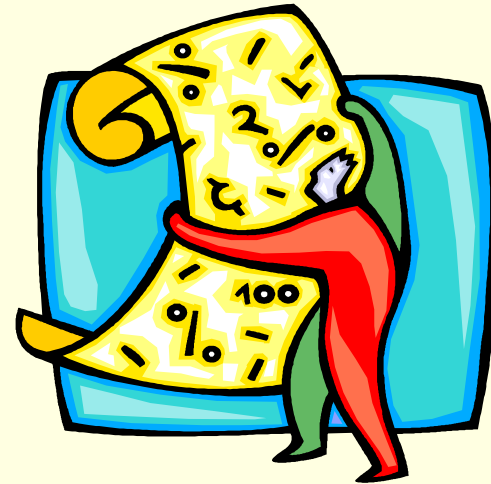
When the court makes an order for a parenting plan, the judge must consider what is in the *best interests of the child* and this guides all custody and visitation decisions in Family Court. Best interests include health safety and welfare issues, any history of abuse, the nature and amount of contact between the parents and children as well as any illegal use of controlled substances or abuse of alcohol.



“Parenting Plan”

A *Parenting Plan* is a detailed plan for sharing time with your children. It includes:

- *Custody – Legal & Physical*
- *Time-sharing arrangements*
- *Logistical arrangements: Who provides transportation, exchange locations, etc.*



“Primary Residence” “Primary Physical Custody”

- The home in which the child spends the majority of time. This term is only required when a parent is applying for public benefits on behalf of the child.



“Stipulation”

- *A formal agreement between the parties.*
When a stipulation is written and signed by a Judge, it becomes a court order.



“Child Custody Evaluation”

- In some cases, the Court may appoint a professional to do a thorough evaluation and provide an extensive report with recommendations. In this county such evaluations are not conducted by the court, but instead by private professionals. *Evaluations can be lengthy, time-consuming and costly.* The parents, not the Court, pay for the evaluation. The court may also ask Family Court Services to provide a “limited investigation” of specific issues such as drug abuse or have the children interviewed. There is not a charge for these investigations as they are considered an extension of the counseling session.



Part II:

The Legal Process

- Starting the Legal Process
- The Mediation or Child Custody Recommending Counseling
- The Child Custody Recommending Counselor's Report
- The Hearing
- After the Hearing



Starting the Legal Process

- *A motion is filed* to bring your matter before the Court. Assistance for this can be obtained at the Self Help Resource Center (559-737-5500) or by consulting an attorney.
- The other party must be *served with the papers*.
- The responding party must file a response.

Mediation and Child Custody Recommending Counseling

- **What will we do in mediation or child custody recommending counseling?**

Negotiate. You and the other party will each present your proposals for custody and visitation, and will *negotiate and compromise* to reach an agreement.



Mediation and child custody recommending counseling

- **Who will attend?** You, the other party and the mediator or counselor.
- **What is the goal?** An agreement on the best parenting plan for the children.



A Special Note about Domestic Violence

In cases where there are sworn allegations of domestic violence, the parties may each meet separately with the mediator.

If you choose to meet with the other party, you may bring a support person to the session. This person is not permitted to participate, but may offer you emotional support. The support person will be asked to sign a confidentiality statement and you will sign a waiver.

More information about domestic violence follows later.

What we can do in child custody recommending counseling and mediation

- Reach an agreement about *custody* of your children.
- Reach an agreement about *a schedule* for sharing time with your children.
- Work out the *details of that schedule* in the parenting plan.
- Talk about important information from both parties; if there is a hearing after the session, this information will help the Judge make an order if there is no agreement.

What we cannot do in session

There are some matters
that we are not able to
address in session.

These include:

- Give legal advice
- Discuss Child Support
- Discuss Spousal Support
- Talk about Division of Property



A Special Note About: Children in Family Court Services

***Please do not bring
children to your
mediation
appointment.***

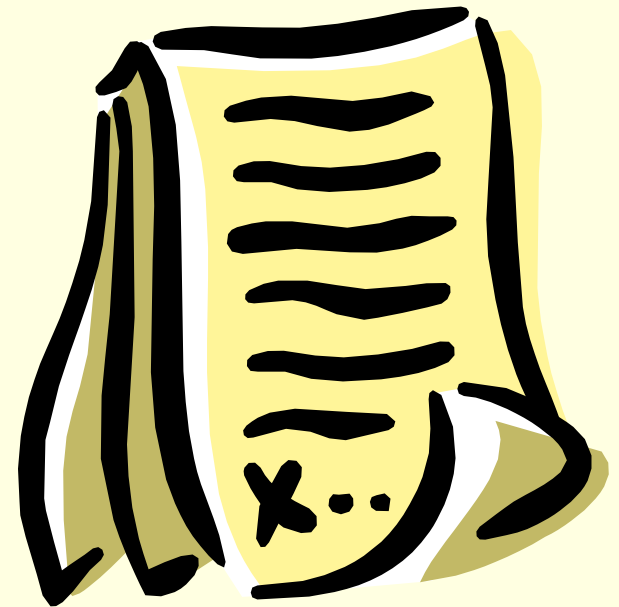
If it is appropriate and necessary to interview your child, the mediator/counselor will advise you and another appointment will be arranged.



After the Child Custody Recommending Counseling session: the Report

If you have been sent to a counseling session before a court hearing and you are unable to reach an agreement, your session will result in the counselor writing a contested hearing report for the Court. *This report includes a recommendation to the Court about what might happen next in your case.*

If you and the other parent reach an agreement, the report will be a stipulation reflecting your agreed-upon *parenting plan* which you and your attorney will sign.



The Child Custody Recommending Counselor's Report

If you and the other party did not reach an agreement, the counselor will write a report to the Court including:

- the issues you discussed,
- issues you have agreed upon and those about which you are still in dispute
- Any recommendations about the next steps.

The Child Custody Recommending Counselor's Recommendation

- The recommendation is not a court order.
- The recommendation is based on the information gathered during the counseling session.
- Not all recommendations become orders, Judges often make different orders and add additional orders.
- Unless it becomes an order, the recommendation is not enforceable.

The Child Custody Recommending Counselor's Recommendation

The recommendation may include tasks for the parents to complete. For example:

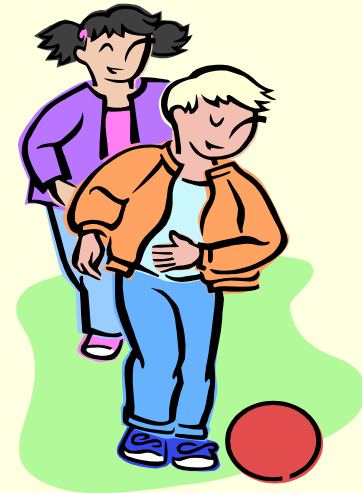
- Parenting Classes
- Anger Management Classes
- Batterer's Treatment
- Drug or Alcohol Treatment
- Counseling

The recommendation can also include a request to interview the children or to conduct a limited investigation.



Remember:

- It is the best interests of the child – *not necessarily the needs of the parents* – that guides the child custody recommending counselor's recommendations and the Judge's orders.



The Hearing

After the mediation, your matter will be heard by the Judge in one of the Family Law courtrooms.

At the hearing, the Judge will review your agreement or the counselor's recommendation, and may ask you questions.

The Judge will then make an *order*.



After the Hearing

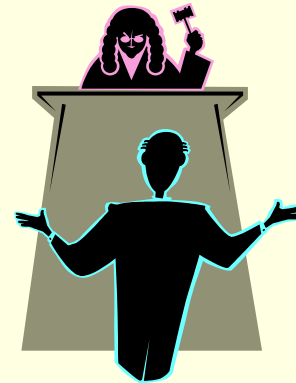
The Judge's order will be detailed in a document called the *Order After Hearing*. This is prepared by your attorney or a staff member from the court's self help center immediately after the hearing. Do not leave the courtroom without obtaining your order.

The Judge's order is enforceable and remains in effect until another order is made to replace it.



Tips for the Court Hearing

- Be on time
- Be organized & prepared
- Address your comments to the Judge, not the other party
- Do not bring children to Court
- Turn off cell phones and pagers – they will be confiscated if heard



Part III:

Making the Most of Child Custody Recommending Counseling and Mediation

Whether you are coming to a voluntary mediation session to negotiate an agreement without a court hearing or you are scheduled for a court hearing and are attending mandatory child custody recommending counseling in this county, there are some things you can do to make the most of your session.



Prepare

*There is no substitute for
preparation!*

Give careful thought to a parenting plan that will work for your child. Designing the parenting plan should include the active participation of both parents.

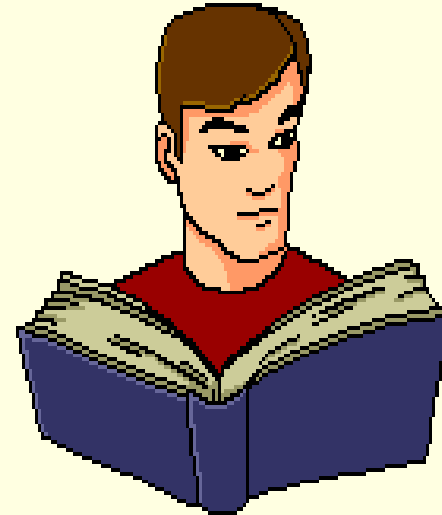
Attend the Family Court Services Orientation “Families in Transition” before your session. For an appointment call 559-730-5000 option 6



Preparing for Child Custody Recommending Counseling and Mediation

Many parents find it helpful to *write out a schedule* and bring it to mediation.

For assistance, check out the information at <http://www.courts.ca.gov/selfhelp-custody.htm>



Preparing for Child Custody Recommending Counseling and Mediation

*Think through the details
of the average day:*

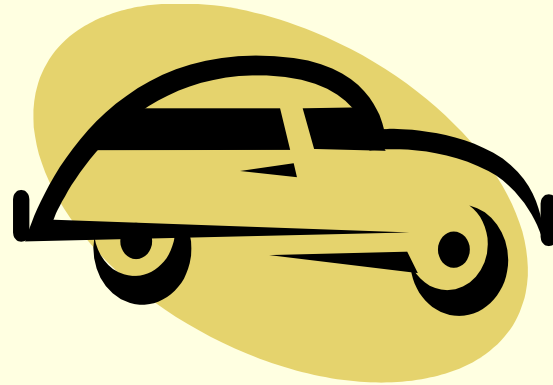
- Your child's needs
- Your child's schedule
- Your schedule
- The other party's schedule
- Regular appointments, sporting events, church involvement.



Preparing for Child Custody Recommending Counseling and Mediation

Think of *special circumstances*:

- Sharing *holidays & birthdays*
- *Vacations* & travel plans
- *Transportation* details
- *Exchange* locations



Preparing for Child Custody Recommending Counseling and Mediation

- *Be realistic.* Even the best plan won't work if it's not possible to carry out.
- *Stay focused on your child's needs.* This could be an emotionally difficult experience for you. Staying focused on your child will help you in this process.
- *Plan B.* Have more than one proposal.
- Think of your parenting relationship as a business relationship – you can work on issues as you would with a business colleague to reach a mutual agreement.

Part IV:

Children and Divorce

- Children experience anxiety, distress and insecurity during separation. Expect some changes in your child.



Children and Divorce

The first year following the separation is a critical time for kids. Parents may be more distracted, and routines may be disrupted.

Everyone, including the child, is struggling to find a new balance.



Parental Co-operation

Children's post-divorce adjustment is directly related to their *parents ability to cooperate* with one another.

Reassure your child that there will be an on-going relationship with each parent and shield your child from the conflict.



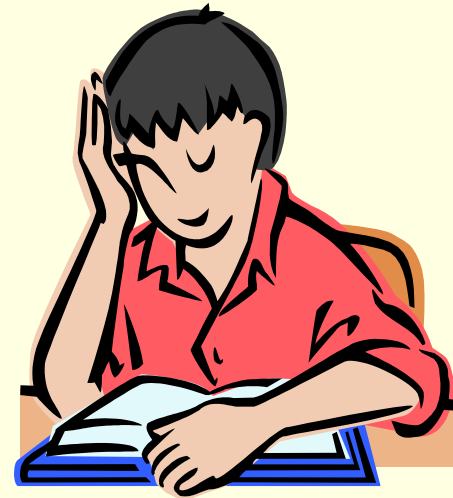
T.M.I.

- With *too much information* from parents, children will be brought into the conflict. Don't share every "gory detail" with your kids. Also, do not use your children to relay messages to the other parent.



Kids & Conflict

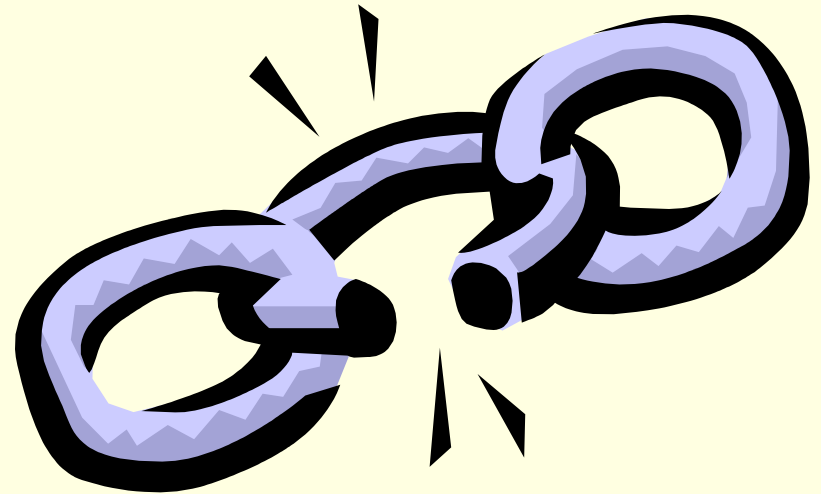
- Children exposed to ongoing parental conflict have more emotional, behavioral, social and academic problems than children who are sheltered from the disagreements.



Remember:

Respect your child's right
to an on-going
relationship with the
other parent.

***You are separating from
the other parent.
Your child is not.***



Part V:

Frequently Asked Questions

- **Will the child custody recommending counselor interview my child?**
- In some cases, the mediator may wish to interview the children. The counselor will arrange this with you, usually after the first meeting with the parents.



Frequently Asked Questions

- **Does the other party also need to go to orientation?**

Yes, the Court expects both parents to attend orientation.

Frequently Asked Questions

- **What if the other party doesn't come to the scheduled session?**

The Court is advised when a parent does not participate.

Frequently Asked Questions

- **What if the other party does not come to Court?**

The Judge will either make an order for your family or set another Court date.



Frequently Asked Questions

- **Can I bring my boyfriend/girlfriend to the counseling session or to Court?**

Only parties that are *named as parties or legally joined to the action* may participate in mediation or child custody recommending counseling. You must file papers to become legally joined to the action.

Anyone may attend and *observe* the Court hearing.



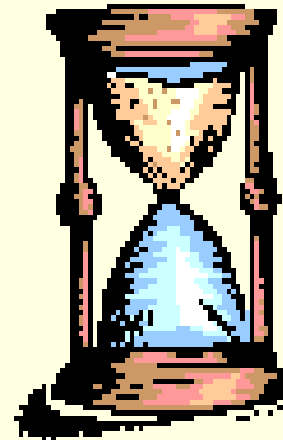
Frequently Asked Questions

- **How long is the session at Family Court Services?**

Times can vary depending on the complexity of the case, but plan to spend at least 60-90 minutes in the session. Additional time will be spent in court waiting for and having your hearing.

- **How many sessions will we attend?**

Most cases have one session before the first hearing. The Court may refer the matter for additional sessions when necessary.



Frequently Asked Questions

■ **Do I need a lawyer if the other party has one?**

No. Many parents successfully represent themselves in custody matters. Attorneys can be especially helpful when there are complex financial matters.

Whether or not you hire an attorney is your decision.

Frequently Asked Questions

- **What if the other party doesn't follow the court order?**

You have the option of calling law enforcement agencies to enforce the order or you can file a motion to change the order. Please do not call the counselor/mediator to report non-compliance with court orders as we are unable to change orders for you.

Frequently Asked Questions

- **What if the other party does not return my child from a visit?**

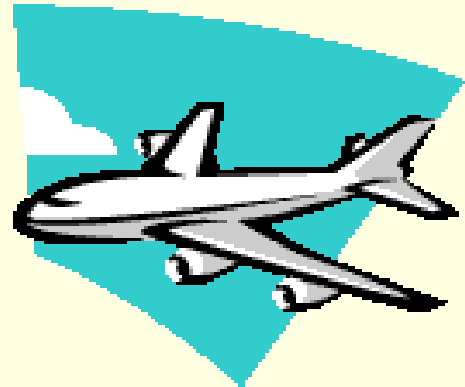
If you are unable to resolve the issue by contacting the other parent you can notify law enforcement to assist in enforcing your order. Please do not call the counselor to report these matters.



Frequently Asked Questions

- **Who pays transportation costs when there is a great distance between the homes?**

The Judge makes all decisions regarding money and expenses. There are many factors that are taken into consideration before an order is made.



Frequently Asked Questions

■ **What is supervised visitation?**

A supervised visit is a meeting of parent and child in the presence of a third person.

It is ordered when the Court has concerns about the safety of the child with a parent or sometimes if the non-custodial parent has not visited in a long time.

Frequently Asked Questions

- **Do we have to come back to Court in order to change our custody schedule?**

If you and the other parent agree to change the parenting plan, you are not required to return to Court. *It is best to put your new plan into a written, dated & signed document. You can do this yourselves, with an attorney, by contacting the self help center or by making an appointment with Family Court Services.*



Frequently Asked Questions

- **What if the other parent is speaking badly about me to the children?**

It is very damaging to children when parents speak badly about each other.

Avoid the temptation yourself and ask the other parent to do the same.

If the matter returns to court, the judge can order that no negative remarks be made in the children's presence.



Frequently Asked Questions

- **What type of paperwork should I bring to the session?**

Any documents should be filed with the court and served on the other party before the session. Your counselor will have the court file to read before he or she sees you. If you have new documents that have not been filed, they may not be considered, but you can talk about them in the session. Only information from neutral third parties such as *Police reports, letters from therapists or teachers and Child Welfare Services reports* are usually considered by the Court.



Frequently Asked Questions

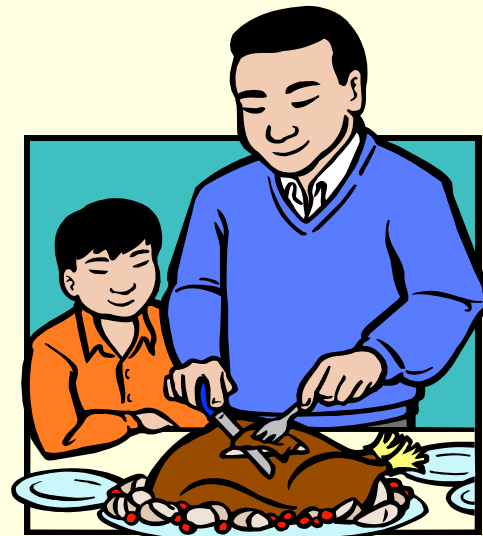
- **Does the Judge ever order that one parent cannot see the child? When does that happen?**

Rarely. In extreme cases, the Court may stop visitation while a parent fulfills the requirements of the order.

Frequently Asked Questions

- **Does the Court favor mothers over fathers or fathers over mothers?**

No. Neither parent is favored over the other on the basis of gender.



Frequently Asked Questions

■ Can I get a late afternoon or evening appointment?

Child Custody Recommending Counseling sessions are scheduled to take place *Monday through Friday*. If your case is on the morning court calendar, you will be sent to Family Court Services around 8:30 a.m. and will then return to court that morning for your hearing. If you have an afternoon appointment for either voluntary mediation or child custody recommending counseling, it will be set at 2:00 p.m. to allow enough time for discussion. Office hours end at 5:00 p.m.

Frequently Asked Questions

■ **When can I get a copy of the child custody recommending counselor's report?**

You always have a right to a copy of the report. If you are in court, your counselor will provide you and the judge a copy of the report in the courtroom, after the session and prior to your hearing.

When you have an afternoon appointment before your court hearing, the counselor will complete the report 5 days before the hearing whenever possible. You can obtain a copy of the report from Family Court Services. When sessions are set close to a hearing date, the report sometimes can not be finished until the day of the hearing.

Frequently Asked Questions

■ What if I disagree with the recommendation?

At your hearing, let the Judge know the reasons why you do not agree.

Judges are not required to follow the counselor's recommendation. *Information presented in Court can influence the Judge's final decision.*

Frequently Asked Questions

- **How does the custody order effect the amount of child support?**

Many factors are considered when calculating child support, including parent income and the amount of time with the child.



Frequently Asked Questions

- **Can I stop visits if the other parent isn't paying child support?**

No.

Contact the *Department of Child Support Services* if there are problems with child support. The Self Help Center may also be able to assist you in returning the matter to court.



Frequently Asked Questions

- **If the other party has a restraining order against me, can I still see my children?**

The Court may permit visitation, but if the children are named as protected persons, the Court may stop visitation or require supervised visits. The order will specify the visitation and you must follow it without otherwise contacting the protected party.

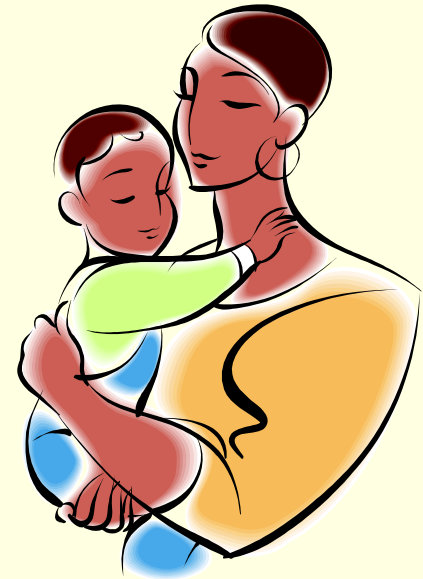
Frequently Asked Questions

- **What should I bring to the mediation or counseling session?**
 - *Your best ideas & an open mind*
 - Your parenting plan proposal
 - Schedules and/or calendars
 - Your questions



This concludes the first portion of our Orientation for Parents

If Domestic Violence is at issue, the following information will be helpful for you to know..



Preparing for mediation and child custody recommending counseling when Domestic Violence is an issue.



Domestic Violence is Harmful to Families

Adults suffer
Children suffer
Families suffer



The Parenting Plan

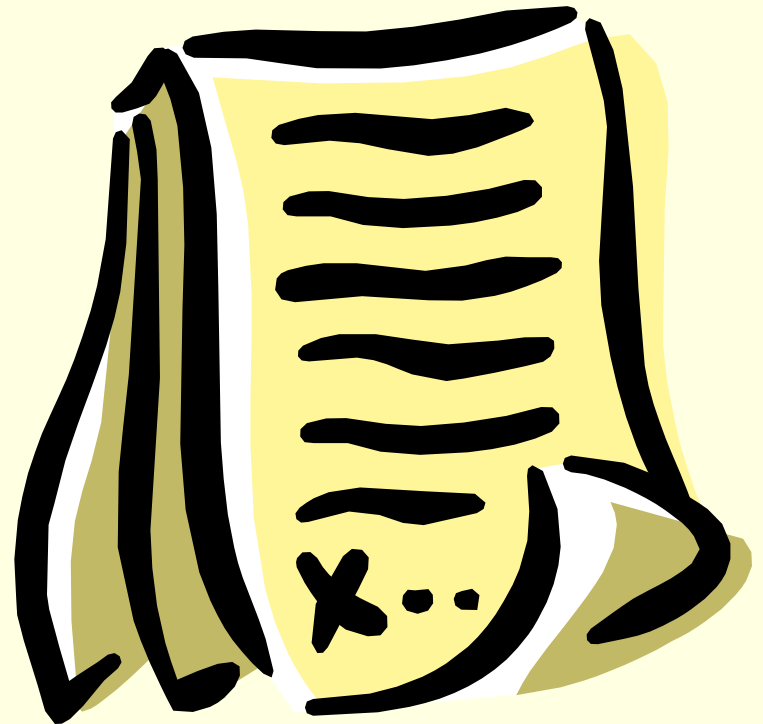
Your Parenting Plan must ensure the safety and well-being of everyone involved.

Your plan should be:

- Good for your children
- Safe for everyone

Restraining Orders

- *There are several types of restraining orders*
- *Emergency Protective Order (EPO)*
 - in effect for 5 days and often issued at the time of an incident
- *Temporary Restraining Order (TRO)*
 - issued by the court after an application is made for an order with facts to support the need for an order
- *Restraining Order After Hearing* – issued by the court for up to 5 years and renewed upon request; this order can be made permanent.
- *Criminal Protective Order (CPO)* – issued in the criminal court, these orders take precedence over civil restraining orders.



Meeting Separately

- *If you have a temporary restraining order or you have made allegations of domestic violence in your pleadings and you are in court for your hearing, the party making the allegations will be seen first in Family Court Services.*
- *There can be a waiver of separate sessions if you wish to meet together.*
- *If you make an afternoon appointment, you and the other parent may have separate appointments scheduled for you*
- *If you have a restraining order, it must have a special exception for peaceful contact between the two of you if you want to meet together.*

Bringing a Support Person to the Mediation

Your support person:

- *May not participate in your mediation*
- *May provide emotional support*
- *Will be asked to sign a confidentiality statement.*
- *Will be asked to leave the session if he or she attempts to influence the session.*

Gathering Documents for the Court to Review

All of the following may be documents you will want file before your court hearing:

- *Restraining orders*
- *Police reports*
- *Medical records regarding treatment for injuries*
- *Child Protective Services reports*
- *Letters from teachers, child care providers, therapists or other healthcare professionals*

Things to Remember about Child Custody Recommending Counseling and Mediation

- *Feeling safe – this is a place to discuss your family and come up with a safe plan*
- *Speaking freely – both parties will have the opportunity to speak without interruption by the other parent.*
- *Getting all the information on the table – this is an opportunity to develop a comprehensive plan.*
- *Hearing from both sides – both parents will have the opportunity to speak and discuss.*

A Parenting Plan that is Safe & Comfortable for your Children

Consider these issues:

- *Has the alleged violence affected your children?*
- *Have your children been exposed to the violence?*
- *Have your children been frightened or injured?*
- *Have your children tried to intervene in the violence?*

Co-parenting when there has been Domestic Violence

Co-parenting can be difficult when there is a violent history:

- *One parent may be responsible for the children most of the time*
- *One parent may have supervised visitation*
- *The Court may order counseling before visits begin*

Can you and the other parent work together?

Some questions to answer in your session:

- *Can you have peaceful contact with each other?*
- *How and where will that contact take place?*
- *Can you make decisions about important issues together?*
- *How well do you understand your children's needs?*

Determining if the Alleged Violence Occurred

- *The Judge – not the counselor or mediator – makes a determination as to whether the alleged violence actually occurred.*



California Family Code Section 3044

- *There are rules that the Judge must follow in granting custody when he or she has made a determination that violence has occurred*
- *You will be given a copy of this law to read before your session*
- *Be sure to read it!*

Remember:

It is your responsibility to protect your children
from exposure to violence

This Concludes our Presentation

We wish you and your family the best in your parenting efforts.

Tulare County Family
Court Services
559-730-5000 option 6

